No. 15637

United States Court of Appeals

For the Ninth Circuit

Larine Cooks & Stewards, AFL, a voluntary association, James O. Willoughby, *et al.*, *Appellants*

vs.

Panama Steamship Co. Ltd., a corporation, *et al.*, *Appellees*

Appeal from the United States District Court for the Western District of Washington Southern Division

---

BRIEF OF APPELLANTS

Vance & Peterson
J. Duane Vance
Ivar H. Peterson
Attorneys for Appellants.

30 Sixth Avenue North,
Seattle 9, Washington.

The Argus Press, Seattle

No. 15637

United States Court of Appeals

For the Ninth Circuit

MARINE COOKS & STEWARDS, AFL, a voluntary association, JAMES O. WILLOUGHBY, *et al., Appellants*

vs.

PANAMA STEAMSHIP CO. LTD., a corporation, *et al., Appellees*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON SOUTHERN DIVISION

BRIEF OF APPELLANTS

VANCE & PETERSON
J. DUANE VANCE
IVAR H. PETERSON
Attorneys for Appellants.

230 Sixth Avenue North,
Seattle 9, Washington.

THE ARGUS PRESS, SEATTLE

SUBJECT INDEX

TABLE OF CASES CITED

STATUTES AND OTHER AUTHORITIES CITED

United States Court of Appeals
For the Ninth Circuit

MARINE COOKS & STEWARDS, AFL, a voluntary association, JAMES O. WILLOUGHBY, *et al.*, *Appellants*, vs. PANAMA STEAMSHIP CO., LTD., a corporation, *et al.*, *Appellees.*	No. 15637

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON SOUTHERN DIVISION

BRIEF OF APPELLANTS

JURISDICTION

This is an appeal from an interlocutory injunction issued by the Honorable George H. Boldt, judge of the United States District Court for the Western District of Washington, Southern Division. The basis upon which jurisdiction of the court below was invoked and asserted is not stated in the pleadings of appellees or in the court's findings, conclusions or order; it is believed, however, that the District Court based jurisdiction upon 28 U.S.C., Sections 1331 and 1333. (See Findings of Fact XIII and XVIII, R. 34, 35, and Conclusion of Law I, R. 37.)

Jurisdiction of this court to review the order granting a temporary injunction is based upon 28 U.S.C., Sec. 1292 and 29 U.S.C., Sec. 110.

STATEMENT OF THE CASE

The only question presented on this appeal is the applicability of the Norris-LaGuardia Act, 29 U.S.C., Sec. 101 *et seq.,* to the controversy here involved. More specifically, the issue is whether this is a "case involving or growing out of a labor dispute" within the meaning of that act, and if so, whether the court was thereby deprived of jurisdiction to issue the temporary injunction herein. (The pertinent provisions of the Norris-LaGuardia Act are reproduced in the Appendix to this brief, *infra,* p. 21).

The appellant, Marine Cooks and Stewards Union (hereinafter sometimes referred to as MCS), pursuant to a certification by the National Labor Relations Board, represents employees of the Stewards Department on vessels operated by employer members of the Pacific Maritime Association and the Pacific Shipowners Association which constitute a large majority of the vessels flying the American flag plying the Pacific Ocean in merchant and maritime commerce (R. 24, 25).

The other appellants are James O. Willoughby, the Seattle agent of Appellant MCS, and Virgil Rogers and Willard Richards, members of Appellant MCS (Finding of Fact IV, R. 31-32).

Some time prior to the dispute herein, the Seattle agent of MCS, appellant James O. Willoughby, learned that the S.S. NIKOLOS, a foreign flag vessel, was about to embark upon a course of coastal shipping between Mexico and the United States, hauling salt (R. 25).

In this operation the S.S. NIKOLOS pays less than one-fifth (1/5) of the customary and going wage rates in

the Pacific area for American flag vessels (R. 26, 27). Due to the entry of the S.S. NIKOLOS into this commerce with these substandard wage conditions, vessels of American registry and operated and manned under contracts with the defendant union have lost or will lose such business with resultant loss of employment to members of defendant MCS (Finding of Fact XXIV, R. 36, 37). One such vessel under contract to defendant MCS was laid up and its crew discharged at the time of the eruption of this dispute (R. 25, 26).

The S.S. NIKOLOS, a vessel registered under the Liberian flag and owned by appellee Panama Steamship Co. Ltd., a foreign corporation, arrived in the Port of Tacoma on or about June 10, 1957, with a cargo of salt consigned to Hooker Electrochemical Company at Tacoma. The vessel was under sub-charter by appellee Seatankers Inc. from North Atlantic and Gulf Steamship Co. Inc., the primary charterer. Her cargo was loaded at the Port of Black Warrior Lagoon on the Pacific West Coast of Mexico (R. 11, 13-14). Contracts for the future carriage of like cargoes from Mexican to United States ports in the Puget Sound area, by the NIKOLOS or other like vessels of appellees, have been entered into by appellees (R. 35, 124-125). The crew of the NIKOLOS is composed entirely of foreign nationals, whose wages are substantially less than the customary and going rate paid on American flag vessels in the Pacific Coast area (R. 13, 26-27, 113).

After the NIKOLOS anchored in the Port of Tacoma, and for several days thereafter, appellant Willoughby and one or two other MCS members cruised around the

NIKOLOS in Willoughby's boat WILL-O-BEE displaying a "picket boat" sign (R. 27, 57-59). About June 14, a second sign was displayed which stated in substance that AFL-CIO seamen protested the loss of their livelihood to foreign flagships with substandard conditions (R. 60).

Hearing was held in response to an order to show cause issued by the District Court on June 14. Appellants filed a response to the order to show cause and at the hearing contended that because this was a case involving or growing out of a labor dispute, this proceeding was governed by the Norris-LaGuardia Act (29 U.S.C., Sec. 101 *et seq.*) and that no injunction could properly issue because the provisions of that act had not been met.

In its Findings of Fact and Conclusions of Law, the court below found and concluded that the picketing by appellants constituted "unlawful interference with international commerce" (Finding XIII, R. 34), that the court had jurisdiction and was not deprived thereof by the Norris-LaGuardia Act, that no labor dispute was involved (Conclusions I and II, R. 37), and that even if a labor dispute were involved, appellants' "picketing and threats of picketing are unlawful interference with foreign commerce" (Conclusion III, R. 37). The court accordingly, on June 19, 1957, issued its temporary injunction, restraining and enjoining appellants from *inter alia* (1) picketing the S.S. NIKOLOS "or any other vessel registered under a foreign flag and manned by an alien crew and owned, operated or chartered by plaintiffs or any of them that may arrive hereafter in

the Puget Sound area" and (2) picketing "at or near any dock or berth at which S.S. 'NIKOLOS' or other such vessels . . . may be located or at any other place where it is necessary for persons having business with said vessel to pass . . ." (R. 40-42).

Appellees' claim for damages was not tried and is now pending before the District Court.

SPECIFICATION OF ERRORS

The District Court erred in not finding that this case was one "involving or growing out of a labor dispute" within the meaning of the Norris-LaGuardia Act and that, therefore, it lacked jurisdiction to grant injunctive relief because: (1) the picketing of appellants involved no fraud or violence, and thus under Section 4(e) of said act was not enjoinable; and (2) there was no evidence to support the findings required by Section 7(e) of said act as a condition precedent to the issuance of an injunction, that public officers were unable to furnish adequate protection to appellees' property.

ARGUMENT

A. Summary

The controversy in this case, involving peaceful picketing by an American union and its members of a foreign-owned vessel manned by a foreign crew engaged in operations in American coastal waters, in protest against the substandard wages and conditions maintained aboard the vessel, which threaten to undermine the more favorable terms and conditions achieved by the union in collective bargaining with American flag vessels and cause loss of employment to members of the

union, is a case involving or growing out of a labor dispute within the meaning of the Norris-LaGuardia Act. *Lauf v. Shinner,* 303 U.S. 323; *New Negro Alliance v. Sanitary Grocery Co.,* 303 U.S. 552; *Milk Wagon Drivers Union v. Lake Valley Farm Products,* 311 U.S. 91; *Wilson & Co. v. Birl,* 105 F.(2d) 948 (CCA3, 1939). Peacefully patrolling around the appellees' vessel by means of a small cruiser displaying a picket sign protesting the substandard conditions on board the picketed vessel, is conduct that cannot be enjoined in the absence of fraud or violence. 29 U.S.C., Sec. 104(e). There was no fraud or violence associated with the picketing activity here, and the court below so found (Finding XXIII, R. 36).

The finding of fact by the court below, that public officers are unable to protect appellees' property, is without support in the record. As Section 7(e) of the Norris-LaGuardia Act requires evidence and a finding that "public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection," before an injunction can be issued, the court therefore lacked jurisdiction to issue the injunction.

B. The Controversy Between the Parties Is a Labor Dispute Within the Meaning of the Norris-LaGuardia Act

The court below found that there was no "labor dispute" within the meaning of the Norris-LaGuardia Act for the following reasons: (1) because the term as there used "does not contemplate a dispute foreign in nature," and (2) because the evidence did not show the

existence of a "labor dispute" (R. 37). Alternatively, the court found that even if there were a labor dispute the appellants had "no right to interfere in the internal economy of a vessel registered under the flag of a friendly foreign power nor to prevent such vessel from lawfully loading or discharging cargo at ports of the United States" (R. 37-38).

We shall show that the controversy between the parties here is a "labor dispute" within the meaning of the Norris-LaGuardia Act, as disclosed by the evidence, and that the circumstance that a foreign flag vessel is involved does not remove this controversy from the application of the Norris-LaGuardia Act.

Subsection (a) of section 13 of the Norris-LaGuardia Act provides that a case "shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; . . . or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section)." Subsection (b) characterizes a person or association as participating or interested in a labor dispute "if relief is sought against him or it and if he or it . . . has a direct or indirect interest therein." Subsection (c) defines the term "labor dispute" as including "any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer or employee."

These definitions, it is submitted, embrace the con-

troversy here and classify it as one arising out of a dispute defined as a labor dispute.

The evidence shows that the controversy between the parties concerns terms and conditions of employment. MCS, the labor organization representing as collective bargaining agent some 5,000 members employed as unlicensed personnel in the steward's department aboard vessels engaged in the Pacific Coast shipping trade (R. 24-25), is vitally interested in the terms and conditions of employment prevailing on any vessel engaged in that trade. MCS believed that the substantially lower wages paid and inferior conditions maintained on foreign-flag vessels in comparison to the wages and conditions prevailing on American ships operating under union contracts presented a real and present threat to the job security of its members. Indeed, the entry of the NIKOLOS into the coastal trade resulted in the crew of the IRA NELSON MORRIS, including members of MCS, being laid off (R. 25-26). It is reasonably to be anticipated that continuation in this trade pursuant to the contracts for future carriage of similar cargo that have been entered into by the NIKOLOS or other vessels of appellees under foreign registry, will further adversely affect employment of MCS members. As the affidavit and testimony of Willoughby make clear (R. 25-26), and as the court found (R. 36-37), the use of foreign-registered vessels in the coastal trade has caused and will cause loss of business by vessels of American registry under contract to MCS, the necessary effect of which has been and will be loss of employment by MCS members.

In sum, the controversy in this case is exclusively concerned with terms and conditions of employment. The picketing of appellants was in protest against the substandard terms and conditions of employment of the crew of the NIKOLOS, which constituted a serious threat to the employment security of MCS members and the continued maintenance of their more favorable wages and conditions of employment. Their objective was to secure adherence to established working conditions by those entering the field. Had the NIKOLOS observed the contractual employment conditions prevailing for vessels in the coastal trade while engaged in that trade, the controversy here would not have arisen. It is solely by reason of the fact that the NIKOLOS maintained conditions inferior to those prevalent in the area that MCS protested and engaged in the picketing activity.

Nor does this dispute fall outside the definition of "labor dispute" because a foreign vessel manned by a foreign crew is involved. There is nothing in the definition of the term "labor dispute" or elsewhere in the Norris-LaGuardia Act that supports the theory that it was to be inapplicable in such circumstances. The controversy is no less one involving terms and conditions of employment because the disputants are of different nationality. In effect, the court below held that its jurisdiction to grant injunctive relief was enlarged because the activity sought to be restrained affected the relationship between a foreign vessel and its foreign crew. But the act recognizes no such criterion for determining jurisdiction. Its definition of "labor dispute" is satisfied if the controversy concerns terms or

conditions of employment, without additional qualification.

The court below referred to the decision of District Judge Solomon in *Benz v. Campania Naviera Hidalgo* (unreported; appeal from interlocutory injunction dismissed as moot and injunctions vacated by this court, 205 F.(2d) 944) as a "quite persuasive" precedent for enjoining appellants' conduct here on the ground no labor dispute was involved (R. 120). While we believe that the trial court in the *Benz* case was in error in ruling that the Norris-LaGuardia Act did not govern that case, there are significant factual differences between the two. In *Benz,* the dispute was between the foreign employer and the foreign crew; the only domestic connection was that the dispute arose while the vessel was transiently in an American port and American unions supported the strike of the crew by picketing. Here, there is no dispute between the foreign employer and the foreign crew; the dispute is solely between the owner and charterer of the vessel, on the one hand, and an American union and its members, on the other. The objective of the picketing action here is confined to protesting and publicizing the effect on the terms and conditions of employment of appellants attributable to the entry of the NIKOLOS and like vessels into the coastal trade, whereas in *Benz* the objective was solely to benefit the striking crew members by altering their contractual relationship with their employer. We submit, therefore, that the facts of this case do not warrant classifying the dispute as one "foreign in nature," even assuming that a dispute of that

character is outside the purview of the Norris-LaGuardia Act.

The legislative history of the act demonstrates that the limitations established in the act were to be applicable to labor disputes involving foreign commerce. In the House, Congressman Beck of Pennsylvania proposed an amendment to Section 1 of the bill which would have made the requirements of the act inapplicable "where a labor dispute involves the obstruction of any instrumentality of interstate or foreign commerce" and would have authorized federal courts in such situations "to grant injunctive relief in the interests of the public in accordance with the principles of equity jurisprudence . . . anything in this act to the contrary notwithstanding." The amendment was defeated, 155 to 63. 75 Cong. Record 5503-5505.

Decisions of the Supreme Court of the United States do not support the narrow and restricted interpretation of the term "labor dispute" adopted by the court below. In *New Negro Alliance v. Sanitary Grocery Co.,* 303 U.S. 552, at 562-3, the Supreme Court said that in the Norris-LaGuardia Act the Congress

> "intended that peaceful and orderly dissemination of information by those defined as persons interested in a labor dispute 'concerning terms and conditions of employment' in an industry or a plant or a place of business should be lawful; that short of fraud, breach of the peace, violence, or conduct otherwise unlawful, those having a direct or indirect interest in such terms and conditions of employment should be at liberty to advertise and disseminate facts and information with respect to

terms and conditions of employment, and peacefully to persuade others to concur in their views respecting an employer's practices."

In that case, an organization of colored persons picketed an employer's establishment protesting the employer's refusal to hire colored clerks. The court answered the contention that this was not a labor dispute because "it did not involve terms and conditions of employment in the sense of wages, hours, unionization or betterment of working conditions," by referring to the definitions in Section 13 of the act and concluded that these definitions "plainly embrace the controversy" involved "and classify it as one arising out of a dispute defined as a labor dispute." *Id.,* p. 560. The later decision in *Columbia River Packers Association v. Hinton,* 315 U.S. 143, does not constitute a limitation on the holding in *New Negro Alliance* for in the *Hinton* case the Supreme Court made clear that in *New Negro Alliance* "the employer-employee relationship was the matrix of the controversy" (*Id.* p. 146) whereas in *Hinton* "a dispute among businessmen over the terms of a contract for the sale of fish" was one "upon which the employer-employee relationship has no bearing." *Id.* pp. 145-6.

Milk Wagon Drivers' Union v. Lake Valley Farm Products, 311 U.S. 91, is particularly in point. There, the defendant union of milk wagon drivers picketed retail outlets that obtained their milk from dairies utilizing the so-called "vendor system" of distribution, claiming that the "vendor system" constituted unfair competition, depressed labor standards, and had re-

sulted in less business for dairies employing drivers and loss of employment by drivers. In reversing the Circuit Court of Appeals which had held the activity enjoinable, the Supreme Court said (*Id.* at pp. 98-9):

> "Whether rightly or wrongly, the defendant union believed that the 'vendor system' was a scheme or device utilized for the purpose of escaping the payment of union wages and the assumption of working conditions commensurate with those imposed under union standards. To say . . . that the conflict here is not a good faith labor issue, and that therefore there is no 'labor dispute,' is to ignore the statutory definition of the term; to say, further, that the conditioned abandonment of the vendor system, under the circumstances, was an issue unrelated to labor's efforts to improve working conditions, is to shut one's eyes to the everyday elements of industrial strife."

A situation closely analogous to the one at bar was involved in *Aetna Freight Lines v. Clayton,* 228 F.(2d) 384 (CA 2, 1955), cert. denied 351 U.S. 950. The plaintiff-employer in that case, an interstate carrier of iron and steel products, had lease agreements with owners and operators of motor transportation equipment used in handling the steel products. The defendant union, which was the collective bargaining representative of employees of competing firms, picketed the plaintiff and its customers seeking to force the plaintiff to conform to the area employment conditions. The Court of Appeals for the Second Circuit held that a "labor dispute" within the Norris-LaGuardia Act existed. In disposing of the contention that there was no labor dispute, the court said:

"The Union in this case was attempting to enforce uniform terms and conditions of employment throughout the Buffalo area for drivers and helpers in the steel-hauling business. The Union believed that Aetna's conduct of its business was a threat to the position of the Union throughout the area. Neither the fact that persons working for Aetna may be independent contractors nor the fact that Aetna's dispute was with an organization of persons not its employees would be sufficient to remove this controversy from the broad definition of § 13. There was testimony that defendant union had made agreements both with steel haulers whose drivers were admittedly employees and with companies who operated through the use of lease agreements. Whatever the arrangements of the companies with their drivers, *the efforts of the Union to secure more uniform observance throughout the industry of the working conditions enjoyed by its members was a labor matter; and this controversy arising directly from such effort was a 'labor dispute' within the meaning of the act.*" (Emphasis supplied)

We submit that the instant case, under the plain language of the act and the foregoing decisions interpreting and applying it, is one involving or growing out of a labor dispute.

The recent decision of the Supreme Court in *Benz v. Compania Naviera Hidalgo,* 25 LW 4235, 39 LRRM 2636, does not militate against the applicability of the Norris-LaGuardia Act to the present case. In that case, the Supreme Court held that the Taft-Hartley Act, 29 U.S.C., § 141 *et seq.,* did not apply so as to oust the federal district court of jurisdiction of a foreign ship-

owner's action for damages caused by the picketing of a foreign ship by an American union in support of a strike by the foreign crew. The court reasoned that the Congress did not fashion Taft-Hartley "to resolve labor disputes between nationals of other countries operating ships under foreign laws," and thus concluded that the Taft-Hartley Act had not pre-empted the field.

Because the administrative remedies afforded by that act are not adapted to resolve such a dispute—*i.e.,* one "between nationals of other countries operating ships under foreign laws"—does not suggest that the limitations on the granting of injunctive relief by federal courts are to be ignored when such relief is sought by a foreign shipowner involved in a labor dispute with an American union, which arises in a United States port. Although both statutes deal with the subject of labor relations, there is nothing in either to warrant the conclusion that their applicability to labor disputes is to be tested by identical standards. The Taft-Hartley Act, for example, is not applicable to persons subject to the Railway Labor Act; nor does it reach labor disputes that do not affect commerce. However, the Norris-LaGuardia Act applies to certain disputes that are subject to the Railway Labor Act. See *Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co.,* 321 U.S. 50, and *Brotherhood of Railroad Trainmen v. Chicago River R. R.,* 25 LW 4220, 39 LRRM 2578, at note 24. And there is of course no requirement that a labor dispute must affect commerce in order for the Norris-LaGuardia Act to apply. The Taft-Hartley Act provides machinery for the regulation and resolution of certain

labor disputes affecting commerce, particularly those concerned with the right of employees to organize and to bargain collectively through representatives of their own choosing. It also defines as unfair labor practices certain conduct by labor organizations and employers and provides remedies for their prevention. In short the Taft-Hartley Act is a substantive statute regulating labor relations affecting commerce. On the other hand, the Norris-LaGuardia Act is primarily concerned with only one aspect of labor relations: the jurisdiction of federal courts to issue injunctions in cases involving or growing out of labor disputes. Because of these differences in reach and purpose, the application of each statute to a particular controversy must be determined by reference to its own terms and the intent of the Congress in enacting it.

C. No Fraud or Violence Being Involved, the Picketing Was Not Enjoinable

Appellants were enjoined from engaging in the following activity:

> "Establishing or maintaining or causing to be established or maintained or in any manner encouraging, aiding, or abetting in the operation and use of a picket boat or any other craft or object as an instrumentality of picketing around or near the S.S. "NIKOLOS" or any other vessel registered under a foreign flag and manned by an alien crew and owned, operated or chartered by the plaintiffs or any of them that may arrive hereafter in the Puget Sound area. . . . " (R. 42)

Simply stated, the conduct enjoined is the act of patrolling around the NIKOLOS or any other vessels of appel-

lees. The court found, however, that "There has been no fraud, or physical violence to persons or tangible property or threats thereof by defendants, or any of them" (R. 36).

Section 4 of the Norris-LaGuardia Act enumerates the specific acts not subject to restraining orders or injunctions. Subsection (e) thereof provides that

> "(e). Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;"

is conduct which may not be prohibited or enjoined.

It is clear that, since the patrolling by appellants was entirely peaceful and did not involve fraud or violence, the District Court was without jurisdiction to enjoin it. See *New Negro Alliance v. Sanitary Grocery Co.,* 303 U.S. 552; *Taxi-Cab Drivers v. Yellow Cab Operating Co.,* 123 F.(2d) 262 (CCA 10, 1941); *Wilson & Co. v. Birl,* 105 F.(2d) 948 (CCA 3, 1939); *Aetna Freight Lines v. Clayton,* 228 F.(2d) 384 (CA 2, 1955), cert. denied, 351 U.S. 950.

D. The Finding That Public Officers Are Unable Adequately to Protect Appellees' Property Is Not Supported by Evidence

Section 7(e) of the Norris-LaGuardia Act requires that "due and personal notice" of the hearing preliminary to the issuance of any injunction in a case involving a labor dispute shall be given "to the chief of those public officials of the county and city . . . charged with the duty to protect the complainant's property," and further requires of the court a finding that "the public

officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." In this case, neither requirement has been met.

There is not a scintilla of evidence that any notice of any kind was given to any law enforcement officers or that they are in fact unable or unwilling to afford protection. The record shows without contradiction that appellants engaged in no violence and made no threats thereof (R. 27). The court so found in Finding of Fact XXIII (R. 36). On its face, the court's finding that public officers "are unable to furnish adequate protection" is unsupported, for the court found that that fact "is shown by the lack of evidence of any action by such authorities" (R. 36). Nor is there any evidence to support the further and contradictory finding (R. 36) that there are no public officers "charged with the responsibility or in fact authorized to protect" the NIKOLOS from the patrolling activity of appellants (assuming contrary to our contention, that such activity is enjoinable).

We submit that affirmative evidence is necessary to support a finding that public officers are unable to perform their duty. Complete absence of evidence in this regard cannot properly furnish the basis for such a finding. To the contrary, it is to be presumed that public officials will discharge their duty, and a failure to show any action by them does not overcome that presumption, particularly where, as here, the evidence supports the finding made that no physical violence had been committed or threatened.

Inasmuch as the foregoing requirements of Section 7(e) have not been met, the District Court was precluded from issuing the temporary injunction. *Lauf v. Shinner,* 303 U.S. 323; *International Brotherhood of Teamsters v. International Union, etc.,* 106 F.(2d) 871 (C.C.A. 9, 1939); *Green v. Obergfell,* 121 F.(2d) 46 (C.A.D.C., 1941); *Grace Co. v. Williams,* 96 F.(2d) 478 (C.C.A. 8, 1938); *Wilson & Co. v. Birl,* 105 F.(2d) 948 (C.C.A. 3, 1939).

CONCLUSION

By peacefully picketing the foreign-flag vessel NIKOLOS and displaying a sign protesting the substandard wages and conditions of employment maintained aboard her, MCS here sought to advertise the threat thereby presented to the employment security of its members and the continued maintenance and enjoyment of the more favorable terms and conditions aboard American flag vessels having collective bargaining contracts with MCS. The controversy arose directly out of these efforts of MCS to protect the standards of employment in the Pacific Coast shipping trade. Being directly concerned with terms and conditions of employment, the controversy here is a case involving or growing out of a labor dispute within the meaning of the Norris-LaGuardia Act, and the court below should have so found.

Inasmuch as no fraud or violence was involved or threatened in the MCS picketing and patrolling of the NIKOLOS, the District Court, by the terms of Section 4(e) of the Norris-LaGuardia Act, was without jurisdiction to enjoin it. The court below also erred in granting the injunction in the absence of notice to the chief

of the public officials, or any of them, charged with protection of property, and in finding, without evidence in support thereof, that public officers are unable to furnish adequate protection, as required by Section 7(e) of the act.

For these reasons, the Order of the District Court granting a temporary injunction should be reversed.

Respectfully submitted,

VANCE & PETERSON
J. DUANE VANCE
IVAR H. PETERSON
Attorneys for Appellants.

APPENDIX

Norris-LaGuardia Act (Title 29, U. S. Code)

Sec. 101:

"No court of the United States, as defined in sections 101-115 of this title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; * * * "

Sec. 104:

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:"

* * * *

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence; * * * "

Sec. 107:

"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in sections 101-115 of this title, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—"

* * * *

"(e) That the public officers charged with the duty

to protect complainant's property are unable or unwilling to furnish adequate protection.

"Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: * * * "

Sec. 113:

"When used in sections 101-115 of this title, and for the purposes of such sections—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employee of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect

interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."